

Schools—School Trustees—Terms of School.

The school management is left to the discretion of the School Board and the length of the school term would be a matter within its discretion, where the minimum term had been provided.

E. J. Cummins, Esq.,
County Attorney,
Deer Lodge, Montana.

My dear Mr. Cummins:

You have requested of this office an opinion upon the construction of Section 1061, Revised Codes of 1921, with reference to whether Trustees can close school after four months although they have sufficient funds for nine months' school.

This statutory provision reads as follows:

"The school year shall begin on the first day of July and end on the thirtieth day of June; provided that in districts of the third class, the school shall be in session not less than four months in any school year, and in districts of the first and second classes the schools shall be in session not less than nine months during any school year; provided, further, that any school district of the third class which shall fail to maintain a free school for four months during the next preceding school year, and any district of the first or second class which shall fail to maintain a free school for at least nine months during the next preceding year, or any school district that shall fail to make its annual report to the County Superintendent as provided by law, on or before August first of each year, shall not be entitled to receive any apportionment of any school moneys. Any and all such moneys thus forfeited by any school district shall be apportioned by the County Superintendent to other school districts of his county."

In the case of State ex rel. Robinson v. Desonia, 215 Pac. 220, the Court said:

"The sole question in this case is whether the defendants were under a legal duty to maintain school in the Robinson schoolhouse. The respondent contends that there was such legal duty and that the defendants had no discretion in the matter. To support this contention, reference is made to Section 1061, Revised Codes of 1921, providing:

"That in districts of the third class, the schools shall be in session not less than four months in any school year.'

"And Section 1056, providing:

"Every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district.'

"It is conceded that the district in question is one of the third class. We cannot agree with counsel for the respondent as to the force of the statutes quoted. To do so we would be obliged to ignore entirely the provision of Section 1010.

"This statute empowers the Trustees to close a school when they deem it for the best interest of all of the pupils of the district. It certainly would be absurd to suppose that there was any intention on the part of the Legislature, in enacting this statute, to authorize the Trustees to close a school only when the pupils are to be sent to another district. Manifestly they must have authority in a district, where more than one school has been established, to close all but one school and send all of the children to that one, when they deem it for the best interest of all the pupils. It will be observed that the Trustees are also empowered to expend any moneys belonging to their district to pay for the transportation of pupils from their homes to the schools to which they are sent. This is an independent matter, also within the discretion of the Trustees, and not a condition prerequisite to closing a school.

"We think the intention of the Legislature was to leave the matter of maintaining and closing schools as well as transporting pupils to the sound discretion of the Trustees, selected by the people of the district."

While this case is not directly in point it shows the discretion vested in the Board of Trustees in such matters.

It is, therefore, my opinion that the school management is left to the discretion of the School Board and the length of the school term would be a matter within its discretion, where the minimum term had been provided.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.